

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

|                         |   |             |
|-------------------------|---|-------------|
| ERROL DUKE MOSES,       | ) |             |
|                         | ) |             |
| Petitioner,             | ) |             |
|                         | ) |             |
| v.                      | ) | 1:03CV00910 |
|                         | ) |             |
| MARVIN POLK,            | ) |             |
| Warden, Central Prison, | ) |             |
|                         | ) |             |
| Respondent.             | ) |             |

**O R D E R**

On July 27, 2005, the United States Magistrate Judge's Recommendation was filed. Notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed objections to the Recommendation within the time limit prescribed by Section 636. Respondent filed a response to the objections, and petitioner filed a reply to the respondent's response.

The Court has reviewed the parties' submissions de novo and finds they do not change the substance of the United States Magistrate Judge's rulings which are affirmed and adopted.

Petitioner also filed a motion to hold these proceedings in abeyance until he litigates a recently filed motion for appropriate relief in state court. However, in referring to this apparently untimely filing in state court, petitioner makes no showing of good cause and due diligence. Rhines v. Weber, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005). Further, the State argues the motion is futile and petitioner's examples (which are only set out in his reply brief) do not show a general state law applicable to ordinary cases such as the instant one, i.e., there

is no hint of unprofessional conduct by post-conviction counsel here. For all these reasons, the motion will be denied.

**IT IS THEREFORE ORDERED** that the petition for writ of habeas corpus (docket no. 6) is denied, and that this action be, and the same hereby is, dismissed. Petitioner has thirty (30) days from the date of this Order to file a motion for a certificate of appealability to this Court.

**IT IS FURTHER ORDERED** that petitioner's motion to hold the proceedings in abeyance (docket no. 32) be, and the same hereby is, denied.

  
United States District Judge

October 18, 2005